

AGENDA

North Dakota Racing Commission
Live and Telephone Meeting
500 N 9th St., Bismarck, ND
Wednesday, February 25, 2004
1:00 p.m. (central)

1. Breeders' Fund distribution for 2003
2. Advice of counsel regarding point system
3. Requests of ORDA and ND Horse Park for supplemental funding
4. Attendance of Chair at joint RCI NAPRA conference
5. Others Matters Which May Come Before the Commission

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Live and Telephone Meeting
500 N 9th St., Bismarck, ND
Wednesday, February 25, 2004
1:00 p.m. (central)

PRESENT:

Chairman James Boehm, Commissioner James Clement, Commissioner Clarence Frederick, Sr., Director of Racing Paul Bowlinger, General Counsel Bill Peterson, Auditor Roger Thompson, and Administrative Officer Helen Tessmann.

By Telephone: Commissioners Sue Andrews and James Arthaud.

OTHERS PRESENT:

Cole, Janell - The Fargo Forum
Glasser, Leon - NDQHRA
Heinert, Wes - ND Quarter Horse Racing Association

Chairman Boehm called the meeting to order at 1:00 p.m. The roll call was taken as indicated below by Director Bowlinger.

Chair Boehm	-	Here
Commissioner Andrews	-	Here
Commissioner Arthaud	-	Here
Commissioner Clement	-	Here
Commissioner Frederick	-	Here

AGENDA ITEM #1

1. Breeders' Fund distribution for 2003

Director Bowlinger stated that all the commissioners had been briefed on this issue. The last three previous racing commissions have decided to take the Breeders Fund balance of December 31st of the previous year and divide that by 8 or take 12.5 percent of it and that would be the amount for 2003. I have given you the numbers, the accountant's 2003 audit showed that for 2002 \$272, 273.12 was distributed. If we use the same distribution as the last three commissions that amount would be \$297,627.14.

Chair Boehm asked if we keep going like that would they have some years to draw on that in case our income keeps going down?

Director Bowlinger replied that right now we are giving one eighth of the fund each year. I think that was a pretty good precedent knowing that there was a large income coming in all the time and that that amount was growing. The problem might be that if next year we don't have the large income do you want to go with one eighth of the fund or do you want to set a set amount

that we are going to distribute this in eight years so you say \$250,000 a year for the next eight years. You could do that at that time but at the present time it is an increase and at least you are guaranteed another eight years out of this breeders' program.

Commissioner Frederick asked if at \$250,000 would that come out to eight years?

Mr. Bowlinger answered that it would depend on what we take in. Right now the \$297,000 is one eighth of what's in there unless we get a large increase in what's coming in. We may have to reduce that amount next year.

Commissioner Jim Clement asked if the one eighth was that precedent established bases on the rules or was it just a precedent that was established.

Director Bowlinger stated that it was debated quite vigorously at previous meetings. Some people advocated paying it out in three years, other people advocated paying out in five years. There was some rational that a horse is only eligible for breeders' fund awards thorough six running years so that should be the amount. I think the issue that prevailed Commissioner was this, in order to sustain a breeding program, which this is, you want someone to go out and buy a stallion or buy a mare. So if someone were to go out and buy a mare today its foal probably would not be running for three years, so it wouldn't even be eligible for breeders awards for three years from now. They came to the conclusion that eight years was a logical way to break up the money so that is where we sit. I can give you the minutes that I have given you for the last two years but other than that there is nothing written in stone. It is not a matter of rule.

Commissioner Clement stated that he would make a motion that we follow the established precedent and approve the 12.5 percent but that they revisit the disbursement of that fund in the future because the reality is that the cash cow is gone and that it should really be our decision based upon what horse breeding community wants, be it the horsemen's council and we should act on what the majority of the breeders in the state want to do. That might no be an easy task but I feel it is what should be done.

Chair Boehm asked if there was a second to the motion. Commissioner Frederick seconded the motion. The Chair asked for any other discussion from the commissioners.

(Discussion)

Director Bowlinger stated that the only thing that he would ask if you want to combine, the motion as it stands now is to disburse one eighth of the breeders fund account as of December 31st, 2003 and the next issue is the 5% administrative purposes and we could include that in one motion and this issue would be resolved if that is the will of the commission.

Chair Boehm asked Commissioner Clement if he wanted to include that in his motion and Commissioner Clement replied, yes. The Chair also asked Commissioner Fredrick if he wanted to include that in his second and he replied, yes.

Chair Boehm asked for any further discussion. Since there was none he asked the Director to take the role.

Commissioner Clement moved to approve the disbursement of one eighth of the breeders' fund balance as of December 31, 2003 and to allow five percent transfer of the disbursed amount for the purpose of administration costs. Commissioner Clarence Frederick seconded the motion.

Executive Director Bowlinger called the roll as follows:

Commissioner Andrews	-	Yes
Commissioner Arthaud	-	Yes
Commissioner Clement	-	Yes
Commissioner Frederick	-	Yes
Chairman Boehm	-	Yes

The motion carried unanimously.

AGENDA ITEM #2

2. Advice of counsel regarding point system.

Director Bowlinger stated that what brought this up is, as most of the commissioners probably know, there used to be breeders' point given for races that were run out of state and races in state. The rule, if you look at it specifically, states that the Racing Commission shall award bonus points for anyone who wins a purse over \$10,000 or \$25,000 (triple points) for races run outside of the state. This year was the first year we did not allow any points be given to anybody running out-of-state, we brought all of the points in state. However, when I read the rule, the rule seems pretty clear that you don't get double points or triple points if you run in state. That is not what the rule says. I brought the matter to the attention of counsel and asked for his advice on what is the best legal interpretation of this rule, and what is the best equitable interpretation of this rule, and as the director, I just want to make sure that if the commission was challenged on this issue that the commission would be relying on the advice of counsel on what we can do on this issue.

Legal Council, Bill Peterson added that as Director Bowlinger pointed out that the rule states the commission shall award additional points within the system and establishes for qualifying performances by accredited North Dakota bred horses who win, place and show in a race at a licensed race meet outside the state where the purse is \$10,000 or more as follows and it goes on and lists the double, triple and quadruple points. There is no room for interpretation on that rule. It says outside the state it doesn't say inside the state and you can't interpret it any other way. So I don't think the commission has the authority to award additional points for races

inside, in the state but it is my understanding that points have been awarded in the past for in state races and that horse owners have, well for instance in 2003, have planned their racing with the understanding that they were going to get additional points for in state races so with that in mind I think the commission does have authority, if they choose, to temporally wave or modify any rule. The commission may want to consider modifying that rule to award additional points for in state races based upon the rule allowing waver of modification. I should point out the rule allowing such waver or modification states that the rule may be temporally waved or modified when the opinion of the commission such circumstances exists that with out such waver or modification or activity the health or safety of any person or horse is adversely affected or the due conduct or best interest of pari-mutuel horse racing of North Dakota is adversely impaired. So keep that in mind in your consideration. Also for the future, 2004 and beyond, the commission may want to consider changing the rule to award additional points in state or simply leave the rule as is and apply it as it is written.

Director Bowlinger stated that he thought the commission understands the rule is clear, right now you could say the rule is clear and the people in 2003 are not going to get paid it. We are going to stand by the rule but what counsel and I had talked about and what my recommendation is that you allow for the modification of the rule for 2003, let the people that won those races get their double points and then re-look at this rule and we will be appointing a North Dakota Horsemen's Advisory Council and let them work with this issue in what they want to do for 2004.

Commissioner Clement made a motion to modify the rule for this year and re-look at the rule for 2004. Commissioner Clarence Frederick seconded the motion.

Chair Boehm asked for any discussion on the motion.

(Discussion)

Leon Glaser stated he approved of the motion that you just made.

Director Bowlinger said Mr. Glasser, the equitable modification I presented to the commissioners, which I think was not anticipated when this rule was drafted, that if you have a \$8,000 race supplemented by the purse fund and then it is further supplemented by the breeders fund money as it has been in the last two years, that now makes that race a \$14,000 race so the winner then gets the benefit of the \$14,000 plus he gets the benefit or she gets the benefit of double points and that is something I would like the horsemen's advisory council to look at and say what is equitable. I don't expect unanimity on that, we may want to say double points will be awarded but not for races where breed points, or breed money is being supplemented.

Director Bowlinger asked counsel, are you satisfied with the motion because it is likely someone will challenge and say it is unfair that somebody got double points this year because the rule is so clear.

Counsel Bill Peterson replied I think it is sufficient, you have the authority to modify the rule and if you are going to award those additional points you have to modify it as the rule stands.

Chair Jim Boehm stated we have a motion and a second is there any further discussion? Chair Boehm stated he that it was the right thing to do and asked Director Bowlinger to take the role.

Executive Director Bowlinger called the roll as follows:

Commissioner Andrews	-	Yes
Commissioner Arthaud	-	Yes
Commissioner Clement	-	Yes
Commissioner Frederick	-	Yes
Chairman Boehm	-	Yes

The motion carried unanimously.

AGENDA ITEM #3

3. Requests of ORDA and ND Horse Park for supplemental funding

Chair Boehm stated the third item on the agenda was the requests from ORDA and ND Horse Park for supplemental funding. You received it in your packet the amount that they are requesting. What are your wishes? I think the packet is quite explanatory so what are your wishes lady and gentlemen?

Commissioner Jim Clement stated he would prefer to deal with them separately and start with ORDA and I think it is a responsible request and I am not in favor of putting all our eggs in one basket, I am not in favor and I know that there is some pretty strong opinions about you know about whether we should race in Belcourt or not. But I am from a little town southwestern North Dakota I like to support the little guy and I like to support, you know the rural portions of the state. So I would make a motion to approve the \$10,000 in additional funding.

Commissioner Jim Clement made the motion to approve the \$10,000 in additional funding to ORDA. Commissioner Clarence Frederick seconded the motion.

(Discussion)

Commissioner Jim Arthaud stated that his only concern with that is we addressed at the meeting when it was supposed to be addressed, we actually gave them more money that what they originally wanted and I think if now the people keep coming in later, afterwards were does it ever end. That's his concern. It isn't the \$10,000 but this procedure, we always try to establish procedures and it seems, I have been on a couple years, but you will get a request 3 months

later than the deadline is supposed to be or you will get a supplement or something. You know, I think it is a concern of mine if we continue to allow to keep happening. That is my only comment.

Chair Boehm thanked Commissioner Arthaud and asked if any other commissioners have any other questions.

Chair Boehm asked if there was any further discussion and there being no further discussion asked Director Bowlinger to take the roll.

Director Bowlinger stated so that it is clear is this a motion just to separate the two out or is this for a grant of the funds. Commissioner Clement answered that it is for a grant of the funds.

Executive Director Bowlinger called the roll as follows:

Commissioner Andrews	-	No
Commissioner Arthaud	-	No
Commissioner Clement	-	Yes
Commissioner Frederick	-	Yes
Chairman Boehm	-	No

The motion failed.

Chair Boehm asked what are your wishes and asked for any other motions on the ND Horse Park funding. **Lack for a motion.**

Chair Boehm stated if there are no other motions we will move on to number 4.

AGENDA ITEM #4

4. Attendance of Chair at joint RCI/NAPRA conference

Director Bowlinger stated that everyone has received the information on the conference of RCI/NAPRA. There is no federal agency that runs racing. In 1997 a group of about 14 states was not happy with the way that ARCI was being run and they split off and formed another group called NAPRA, which is the North American Pari-mutuel Regulators Association. Our commission belongs to NAPRA, I sit on the board of NAPRA, I chair two committees at NAPRA and have been asked to speak at this most recent convention and the primary topic of this convention will be "is there a possibility of joining these two bodies back together, RCI and NAPRA. It is going to be a very, very interesting meeting. I am there on regulatory issues. My job is to learn more about the regulation of racing, although there is going to be a lot of conversation about slot machines, video slots, pari-mutuel gaming devices. However, there will be a huge political component to it, so the membership of NAPRA and the board specifically, requests that each jurisdiction send at least one commissioner to this meeting to represent NAPRA regarding the possible joining or decision not to join with RCI. So I thought it would be most appropriate that our chairman attend. The cost for the seminar is \$395.00 and the state per diem is what it would cost.

Chair Boehm asked what are your wishes.

Commissioner Clement moved to approve Chair Boehm attending the joint RCI/NAPRA conference and approve the expenses associated with the conference. Commissioner Frederick seconded the motion.

(Discussion)

Chair Boehm asked for any further discussion. He asked the Director to take the roll.

Executive Director Bowlinger called the roll as follows:

Commissioner Andrews	-	Yes
Commissioner Arthaud	-	Yes
Commissioner Clement	-	Yes
Commissioner Frederick	-	Yes
Chairman Boehm	-	Yes

The motion carried unanimously.

AGENDA ITEM #5

5. Others Matters Which May Come Before the Commission

Chair Boehm asked if we are going to act on the Horsemen's Advisory Committee?

Director Bowlinger answered yes and stated that at the last meeting it was discussed that I and Commissioner Clement would mutually agree on a horsemen's advisory group and I have submitted those names to Commissioner Clement and he has reviewed them and I would just read those name. I tried to come up, with Commissioner Clement, to getting a representation of a combination of the people who represent the horsemen's groups and the people who are typically calling this office and are most concerned with these issues and they are: Leigh Backhaus, Gary Bergsrud, Ralph Buchholz, Pete Davis, Doug DeMontigny, Norman Glinz, Wes Heinert, Kris Moen, Doug Plummer, Dave Wisdom and Eric Wondrasek. I ask that Wes Heinert be appointed temporary chair.

Chair Boehm stated that he would request one thing is that if this gets approved, that we get a copy of their minutes when they have these meetings. So we get an idea of what is going on and if they have an issue to bring before the board and that they do that in future meetings.

Director Bowlinger added that with the list presented, the rule as it reads that the commission can call this body and appoint the members. So all we need is a motion that this commission has adopted this as the membership.

Commissioner Frederick moved to approve the list for the ND Horsemen's Advisory Council. Commissioner Clement seconded the motion.

Chair Boehm asked for discussion.

Commissioner Arthaud stated he had the same concerns as you have. Are we going to set in place some tasks that they are going to have to report back, quarterly or so on and so forth, so we know what is going on. So it just doesn't get dropped in our lap in the end. I think I have the same concerns that you have.

Commissioner Arthaud, Director Bowlinger added, I have the same concerns. You run the risk of, I know one thing that when I was on it, there was a huge outcry that the previous director who was fired, or resigned, was controlling those meetings. I will not be put in that position. I had anticipated that I would come up with a set of possible issues that would be pertinent for the racing commission and give them as possible agenda items. Perhaps we could see what their work product is after the first three months and then re-address it.

Commissioner Arthaud stated that he thought that we would want at least one quarterly report or something so that we do not have to hear about it thorough the back channels, we would just have it up front you know.

Legal Counsel Peterson stated that the idea about the minutes is very good so the commission is certain that, you know, that this is voice of this advisory board rather than an individual or a couple individuals.

Commissioner Clement added that we want to be responsible to the horse industry in this state and we need to know what there wishes are and that is why I think they should adopt specific policies and the only way that you are going to do that is to document it in minutes. So there is a responsibility on the part of this advisory council, a responsibility on the part of the horsemen within the state. If they want the racing commission to consider the best interest of the horse community in the state, then they need to be responsible and that is in adopting policy, having minutes, documenting what they wish and want.

Commissioner Arthaud said that I think that maybe the first step could be is they report back to us once they have formed their committees and elected their officers. I am sure they are going to have a Secretary, President and so on and so forth, correct?

Mr. Glasser added that there is only one other thing and that is entirely up to the commission, being on one of those advisory boards in the past, I guess I heard those named mentioned, but I never really got a chance to get them down, before it was pretty well balanced between the Quarter Horses and Thoroughbreds and the Trotters had less, the reason for that balance was there will be issues coming sometimes between breeds and if you have an off set, power on that thing right off the bat, when that opinion comes down to you, you know, if there were 6 quarter horses people on and four thoroughbred people and it is an issue between the two, quarter horses are going to win. So when you set down with those names you might want to try to get somewhat of a balance.

Commissioner Arthaud added that if the board were going to be lopsided the commission would take that into consideration when they look at what they come up with. They are not going to be blind to that fact. Director Bowlinger added some are breeders and some are racers. Commissioner Arthaud added right, we are not going to be blind, we know who is sitting there, you know. Mr. Glasser added there is a little bit of a tilt here toward to the thoroughbred. 2 from the trotters, I guess if I go down the list, you have Backhaus, Bergsrud, Buchholz, Dave is and Doug DeMontigny is both so I won't count him, Wes has both so I won't count him, Kris Moen, you've got Doug Plummer who has both, you've got Dave Wisdom and mine who are pure

quarter horse, so you have got about 5 to 2 split on that thing. Now, not counting those who have both breeds. So, just something I want to mention. I am not trying to tell you your business but something I brought up to let you know.

Commissioner Clement asked how would they change it.

Mr. Glasser stated to balance it out you could throw a couple more quarter horse people on there to balance.

Commissioner Clement asked so you think Doug Demontigny, Wes Heinert and Doug Plummer would not act responsibly with horse issues? Mr. Glasser replied, oh, no, no. That's wrong. I am not trying to accuse anyone. If you throw them with both breeds with the quarter horses then you are balanced, then you are balanced. If you look at it that way. Commissioner Clement added if we would put one more quarter horse person on then we would get accused of tipping the scale to the other way. Mr. Glasser replied that when Paul read those names he wasn't sitting there counting so I didn't know, it was something I was going to mention and it will save a lot of trouble down the road if you are balanced. Director Bowlinger added I picked these in attempt to be balanced and basically put on the people that call this office and complain the most or have issues the most about the breeders fund. Commissioner Clement and Director Bowlinger stated they had no problem with the addition of Mr. Glasser.

Chair Boehm asked what are your wishes.

Commissioner Clement made a motion in order to kick this thing off that we approve this list. Commissioner Frederick seconded the motion.

(Discussion)

No further discussion Chair Boehm asked the Director to take the roll.

Executive Director Bowlinger called the roll as follows:

Commissioner Andrews	-	Yes
Commissioner Arthaud	-	Yes
Commissioner Clement	-	Yes
Commissioner Frederick	-	Yes
Chairman Boehm	-	Yes

The motion carried unanimously.

Chair Boehm asked for any other items.

Director Bowlinger stated a rumor that he is hearing which is that there were monies in Fargo that went out from the breeders' fund to be paid to horses that ran from out-of-state. Now that was passed on from the Chairman to me from a conversation that he had with Mr. Glasser and Mr. Wisdom and Mr. Glasser you are here, do you know of any breeders' money that went to out-of-state horses?

Mr. Glasser answered no, there needs to be a clarification I think. It may have been interpreted that way and maybe even said that way but I did some double-checking on the person who was complaining about that. Director Bowlinger asked who was the person that was complaining about that. Mr. Glasser answered that Doug Plummer had had some complaints about that. Director Bowlinger asked do you know if Doug Plummer has made allegations of that to many people? Mr. Glasser answered, no. But now I talked to Doug Plummer and so here is the clarification, no, you know how things go, do this or that, what their complaint was Doug and a few more of the people was not any breeders' fund money taken and put into a race, and then that race opened up and out-of-state people come in and took the breeders' award. What their complaint was, was that there was a North Dakota bred race, and the race would have say, 6 - 7 head in it wouldn't be a full gate, and then at that time in order to get a full gate, they would open it up, what their complaint was, was that it was a North Dakota bred race, to give North Dakotan in their own class and then when it was opened up the out-of-state would come in and run 1, 2, 3 and the North Dakota people did not have a chance they felt to get their breeders award in a race that was kind of designed for them. But no there was not to my knowledge any allegations or anyone that said there was money that came from the breeders fund going to out of state people.

Director Bowlinger stated because that is a really damaging and I know Mr. Plummer, I shared with the board the letters that Mr. Plummer wrote in 1999 and 2000, accusing Les Schmidt of racism and accusing there was criminal conduct on the part of Mr. Blaseq and Les Schmidt, these are the things that are just crippling to this industry and to hear these allegations because Les couldn't be here to defend himself today and I talked to him yesterday and he said absolutely not. I have a letter, which I have provided to the commissioners showing that I wrote a letter that this absolutely could not happen. I have no information that it did but yet it is represented to me that horsemen's community are saying breeders' funds went to out of state horses.

Chair Boehm asked if there was anything else.

Wes Heinert asked does anybody have any idea what is going on with the Chad Warren issue with Randy Blaseg down in Fargo?

Director Bowlinger stated we did not schedule any disciplinary actions at this meeting. The last time I checked, it was still an open investigation with West Fargo Police Department.

Wes replied that he read a few times that you guys were going to take a look at this issue? Director Bowlinger answered, we are.

Wes added that on Chad's behalf, as somebody, who has used him to ride quite a few horses in the past, that if he was light enough to ride in races prior to getting yanked off horses, why did they let him ride the whole meet until just at the end and then all of a sudden he was too heavy. That is one thing I want you to take in consideration. It is a pretty big point. I just want somebody to keep in mind.

Director Bowlinger stated that really the only issue I will be looking at is assault on the steward. That is what has been referred to me. Wes replied that that definitely needs to be addressed, I am not saying that it doesn't, I am just saying that I would like you to take in consideration, he was good enough up to that point, all of sudden he wasn't.

Legal Counsel Peterson Bill pointed out that you are talking about a disciplinary action against his license. He will have full opportunity to respond to the complaint against him so it is a little bit premature to be deciding the issue. Wes, answered that he understood all of that and that he was someone who used him in the past and I have been thinking about it for some time

Chair Boehm and Director Bowlinger thanked the commissioners.

Commissioner Frederick moved to adjourn. Commissioner Clement seconded the motion.

Voice vote carried unanimously.

Meeting adjourned at 1: 55 p.m.